



Brighton
CITY OF BRIGHTON
REGULAR MEETING OF THE
PLANNING COMMISSION

AGENDA

February 24, 2022

6:00 p.m.

Located in the 1st Floor Council Chambers at City Hall
500 S. 4th Avenue, Brighton, CO 80601

Chairman:	Chris Maslanik	Ward III
Vice-Chair:	William Leck	Ward IV
Commissioners:	Mike Pishaki	Ward I
	Valerie Wolf	At Large
	Kathryn LeDonne	Ward II
	Liane Wahl	Alternate
	Vacant	Alternate
	Giana Rocha	Youth
	Dahaan Medina	Youth

ATTENTION TO ALL ATTENDING PUBLIC HEARING

Please leave all cell phones out of the Commission Chambers or make sure that they are turned off before entering. Thank you!
Por favor apague todos telefonos de celular y aparatos de busca personas antes de entrar al concejo municipal. Muchas gracias!

I. Call to Order at 6:00 p.m.

II. Pledge of Allegiance

III. Roll Call

IV. Minutes from the January 13, 2022 regular Planning Commission meeting and the January 20, 2022 special Planning Commission meeting will be presented for approval

V. Public invited to be heard on items not on the agenda

VI. Agenda Items

1. Presentation for approval of the Findings of Fact from the Vistas at Donelson Park Appeal of Administrative Decision

VII. Old Business

VIII. New Business

1. Appointment of At Large Commissioner Valerie Wolf
2. Introduction of Ward II Commissioner Kathryn LeDonne
3. Study Session: Community Development Process Overview, Mike Tylka Presenting

IX. Reports

1. General Development Update from Staff

X. Adjournment

CITY OF BRIGHTON
PLANNING COMMISSION
MINUTES
January 13, 2022

I. CALL TO ORDER

Chairman Maslanik called the meeting to order at 6:10 p.m.

II. PLEDGE OF ALLEGIANCE

Chairman Maslanik asked Commissioner Wahl to lead the Pledge of Allegiance.

III. SWEARING IN OF MICHAEL PISHAKI AS PLANNING COMMISSIONER OF WARD 1

IV. ROLL CALL

Roll call was taken with the following Commissioners in attendance: Chris Maslanik, Bill Leck, and Mike Pishaki. Alternates Liane Wahl and Valerie Wolf were present but not seated to vote. Commissioner Fidel Balderas was excused. Youth Commissioner Dahan Medina was present. Youth Commissioner Giana Rocha was excused.

STAFF PRESENT:

Alicia Calderon, City Attorney; Yasmina Shaush, Assistant City Attorney; Natalie Hoel, City Clerk; Mike Tylka, Assistant Director of Community Development; Scott Olson, Storm Water Coordinator; Nick Di Mario, Associate Planner; Kate Lesser, Commission Secretary

V. MINUTES OF PREVIOUS MEETINGS

Minutes from the December 9, 2021 regular Planning Commission meeting were approved as presented.

Motion by Commissioner Leck

Second by Commissioner Pishaki

Voting Aye: All Present

Motion passes: 3-0

VI. PUBLIC INVITED TO BE HEARD ON ITEMS NOT ON THE AGENDA

None presented.

VII. AGENDA ITEMS

1. Election of Planning Commission Chair and Vice Chair
2. Establishment of the Regular Meeting Dates
3. Mountain View Estates Planned Development: Nick Di Mario Presenting

1. Election of Planning Commission Chair and Vice Chair

Chairman Maslanik opened the floor for nominations of Chair and Vice Chair:

Commissioner Leck submitted a nomination for Commissioner Maslanik to continue serving as Chair.

Commissioner Maslanik submitted a nomination for Commissioner Leck to serve as Vice Chair.

No other nominations were submitted.

Commissioner Maslanik was elected as Chair of the Planning Commission.

Commissioner Leck was elected as Vice Chair of the Planning Commission.

2. Establishment of Regular Meeting Dates

Chairman Maslanik proposed tabling this item until after the public hearing item.

Motion by Commissioner Leck to switch the order of numbers two and three under item seven on the agenda

Second by Commissioner Pishaki

Voting Aye: All Present

Motion passed 3-0

All further discussion on this item occurred after item number three on the agenda.

Chair called for discussion among Commissioners, summarized:

Commissioner Pishaki commented that he prefers to keep the existing meeting schedule.

Commissioner Leck spoke in favor of holding study sessions.

Commissioner Maslanik spoke in favor of having the Planning Commission attend additional trainings as well as study sessions with City Council.

3. Mountain View Estates Planned Development

Chair opened the public hearing at 6:18 p.m.

Chair invited Staff to present, summarized:

Mr. Di Mario presented the item as outlined in the staff report and confirmed that legal publication and posting were completed for this hearing. Mr. Di Mario stood ready for questions.

Chair called for questions from the Commission of Staff, summarized:

Commissioner Pishaki questioned how this zone change will benefit the community's welfare in accordance with the Land Use and Development Code.

Mr. Tylka stated that the low-water xeric landscaping in the subdivision will benefit the community by not pulling from the water systems that are already strained.

Mr. Di Mario elaborated that the proposed zone change would not change the existing allowed densities on the property and the new setback requirements would decrease water usage as well.

Commissioner Pishaki inquired as to whether any metrics exist to show how much water would be saved with this new plan versus if the property were to be developed as it exists now.

Mr. Di Mario replied that no hard numbers are available but the right-of-way and private landscaping regulations could be reviewed.

Commissioner Maslanik requested clarification on whether these are single-family homes with either attached or detached garages.

Mr. Di Mario replied that there single-family detached homes and attached paired homes (duplexes) over two lots with attached garages.

Chair asks if the Applicant has prepared a presentation:

Jarrold Likar with AMREPCO, Inc. at 333 Rio Rancho Drive #202, Rio Rancho, NM 87124
Josie Kohnert with Redland at 1500 West Canal Court, Littleton, CO 80120

The Applicant team provided a brief presentation and stood ready for questions.

Chair called for questions from the Commission of the Applicant or Staff, summarized:

Commissioner Maslanik questioned whether the Applicant was aware of the City's Development Review Committee and the process for reviewing the application when it was submitted.

Ms. Kohnert replied yes.

Commissioner Maslanik requested clarification on whether the pond on the property would be a detention or retention pond.

The Applicant stated that the current design would be a detention pond.

Mr. Olson confirmed that the detention pond is in accordance with state laws and all water would be evacuated from the pond within 120 hours.

Chair called for the public to ask any questions the Applicant or Staff, summarized:

Les Fraley at 1045 CR 2, Brighton, CO 80603, asked whether there has been any consideration to traffic control where 35th goes into County Road 2. Is speed being considered on County Road 2?

Mr. Di Mario replied that yes, this was part of the development agreement and the developer will have to contribute a signal at that intersection. The developer's funds for half of the cost to design and construct the signal will be escrowed before the development is allowed to go vertical.

Mr. Tylka stated that the Public Works department is currently reviewing the Master Transportation Plan which will likely result in downgrading speeds.

Sarah Lyon at 18053 Zeno Court, Brighton, CO 80601, questioned how much land could be taken to widen Baseline Road and where entrance/exit points would be. Have water tables been considered, and will the status of unincorporated property change?

Mr. Di Mario stated that there will be major exit points at N. 35th Avenue, Telluride, and Longs Peak to access Bridge Street. The developer does have an obligation to improve 168th (Baseline).

Mr. Tylka stated that power of eminent domain is not being considered to expand 168th. Forced annexation is not being considered and would require a public hearing with City Council.

The Applicant stated that the properties will be on city water so they will not pull from the wells or effect the water tables.

Gary Baker at 16428 Ventura Court, Brighton, CO 80601, inquired as to how soon a four-lane road on each side of

Mr. Di Mario stated that the developer has an obligation to improve Telluride, North 35th, and other surrounding roads per the development agreement. This will occur in a phasing order and development of those phases cannot occur until the obligations have been met.

Mr. Tylka commented that no new plans have been made by the City to expand County Road 2.

Shirley Bailey at 17280 E. 168th Avenue, Brighton, CO 80601, questioned how expansion will be done on County Road 2 without eminent domain, and how prairie dogs on the property will be dealt with.

Mr. Di Mario stated that the developer is not required to expand County Road 2 as part of this application. The applicant must provide acceleration and deceleration lanes and additional improvements. The traffic impact study has expired and, if approved, the developer must provide an updated study which may change their obligations. Prairie dogs are under the purview of the Fish and Wildlife Department.

Paula Stueve, 210 S. 5th Avenue, Brighton, CO 80601, inquired about the Fire Department's ability to serve these additional houses. Also, what is the City doing to assist with drainage.

Mr. Tylka stated that Brighton Fire Authority did review and approve the application and impact fees are paid to them for any new development.

Mr. Olson explained that the City is working with Mile High Flood District to design a regional outfall for the area and described the drainage plan for the property.

Mr. Di Mario stated that the developer is also obligated to cover sewer system improvements and provided additional details on the sewage system for the proposed property.

Gary Baker at 16428 Ventura Court, Brighton, CO 80601, asked who he can bill for damages caused by the weeds in the proposed property.

Mr. Tylka stated that a code enforcement violation has been cited on the property and the City is seeking corrective action for the issue.

David Gildea at 15203 Arrowhead Drive, Brighton, CO, 80601, questioned whether the overall traffic impact is included in the traffic impact study.

Mr. Tylka stated that a staff member from Public Works is not present. The Master Transportation Plan is currently being reviewed to determine what areas need capital improvement funds for improvements.

The Applicant commented that the City did accept the previous study and will submit an update to the study if the project is approved.

Roni Garmann at 17731 E. 164th Avenue, Brighton, CO 80601, asked what will be done to Telluride and 164th to reduce traffic, what will happen to nesting eagles, and specific drainage issues.

Mr. Di Mario stated that a traffic circle will be installed. The City cannot speak to drainage issues in unincorporated Adams County.

Mr. Tylka stated that preliminary conversations with the County have pointed to closing off Telluride at Longs Peak to limit access.

The Applicant stated that Telluride would still connect to Baseline and Venura would connect to Longs Peak. A pipe is planned to direct stormwater to the regional outfall area.

Mr. Olson stated that construction must follow certain requirements based on the time of year if it coincides with eagle nesting times.

Chair called for any further questions from the Commission or the audience.

None presented.

Chair called for any member of the audience to speak on behalf of this item being presented.

No proponents were present.

Chair called for any member of the audience to speak in opposition of this item being presented.

Seven opponents were present.

Sarah Lyon at 18053 Zeno Court, Brighton, CO 80601

Shirley Bailey at 17280 E. 168th Avenue, Brighton, CO 80601

David Gildea at 15203 Arrowhead Drive, Brighton, CO, 80601

Les Fraley at 1045 CR 2, Brighton, CO 80603

Roni Garmann at 17731 E. 164th Avenue, Brighton, CO 80601

Dawn O'Callaghan at 16529 Ventura Court, CO 80601

Kathy Baker at 16428 Ventura Court, Brighton, CO 80601

Chair called for any further comments from the Applicant.

The Applicant stated that the proposed density is below that allowed maximum and the traffic compliance letter substantiates the study done previously and was submitted with this application and improvements will still be done as determined in 2013, along with other infrastructure improvements.

Chair called for questions from the Commission of Staff, summarized:

Commissioner Wahl questioned the law suit on Chavez Street and why the traffic study would not be done prior to this stage in the process.

Ms. Shaush stated that the law suit will be going to trial in the next month to determine a resolution to the issue on Chavez.

Mr. Di Mario clarified that traffic studies are completed during the platting process and this property has been platted since 2013.

The Applicant provided details on the traffic compliance letter.

Commissioner Pishaki inquired as to whether the development was approved in 2013.

Mr. Di Mario explained that the land was entitled in 2013 and is platted and legal to build on. The Planned Development presented would just amend the development standards.

Mr. Tylka confirmed that the land owner can still legally build on the property after denial of the Planned Development from the Planning Commission or City Council by submitting civil documents through an administrative process.

Chair called for discussion among Commissioners, summarized:

None presented.

**Motion by Commissioner Leck to approve the resolution as presented
Second by Commissioner Pishaki**

Voting Aye: All present

Motion passes: 3-0

VIII. OLD BUSINESS

IX. NEW BUSINESS

1. Conflict of Interest Form 2022
2. Study Sessions, Informational Sessions, and/or Trainings
3. Recognition of Commissioner Balderas for His Service

X. REPORTS

1. General Development Update from Staff

XI. ADJOURNMENT

Motion to adjourn at 8:32 p.m.

Motion by Commissioner Pishaki

Second by Commissioner Leck

Voting Aye: All Present

Motion passes: 3-0

CITY OF BRIGHTON
PLANNING COMMISSION
MINUTES
January 20, 2022

I. CALL TO ORDER

Chairman Maslanik called the meeting to order at 6:07 p.m.

II. PLEDGE OF ALLEGIANCE

Chairman Maslanik asked Commissioner Balderas to lead the Pledge of Allegiance.

III. ROLL CALL

Roll call was taken with the following Commissioners in attendance: Chris Maslanik, Bill Leck, Fidel Balderas, and Mike Pishaki. Alternate Liane Wahl was present and seated to vote. Alternate Valerie Wolf was excused. Youth Commissioners Giana Rocha and Dahaan Medina were absent.

STAFF PRESENT

Alicia Calderon, City Attorney; Yasmina Shaush, Assistant City Attorney; Holly Prather, Director of Community Development; Mike Tylka, Assistant Director of Community Development, Marc Johns, Assistant Director of Utilities; Thu Lam, Utilities Engineering Manager; Christopher Montoya, Public Works Engineering Manager, Scott Olson, Stormwater Coordinator; Kate Lesser, Commission Secretary

PLANNING COMMISSION'S LEGAL COUNSEL

Austin Flanagan, *Hoffmann, Parker, Wilson, Carberry P.C.*

IV. VISTAS AT DONELSON PARK APPEAL OF ADMINISTRATIVE DECISION

1. Vistas at Donelson Park Appeal of Administrative Decision

Motion by Commissioner Leck to move to Executive Session for the purpose of holding a conference with the legal counsel to receive advice on specific legal questions related to an appeal of the site plan for Vistas at Donelson Park pursuant to C.R.S. § 24-6-402(4)(b).

Second by Commissioner Balderas.

The Planning Commission moved to Executive Session at 6:09 p.m.

The Planning Commission returned to the Council Chambers at 6:23 p.m.

Chair invited Staff to present, summarized:

Mr. Tylka requested that five of Staff's allowed 25 minutes of presentation time be reserved for Staff to comment after the Appellant's presentation.

Chairman Maslanik denied the request.

Mr. Tylka presented the item as outlined in the staff report starting with details on the review process that the project went through and cited the LUDC and applicable standards, noting that no clear error was made based upon the review criteria pertaining to the project type.

Ms. Shaush stated that the decision to overturn the appeal must be based on evidence which the Appellant has failed to provide.

Chair invited the Appellant to present, summarized:

Mr. Ryan presented a PowerPoint citing concerns for public safety, health, general welfare, parking, traffic, and property value with relation to LUDC 1.01 and 1.02. Presentation included concerns regarding safe paths to schools, location of project, emergency accessibility, air pollution, vehicle emissions, noise pollution, neighborhood meeting requirement, notification, and school capacity, and cited the organizational chart and mission statement of the City.

Chair invited the Applicant to present, summarized:

Gregory Himmel, the Applicant representing Greystar, stated that the developer made amendments to the original proposal according to Staff's comments. Mr. Himmel summarized the entitlements allowing the development to proceed and that no exceptions were made.

Nate Hunt, legal counsel for the Applicant, stated that the appeal must be denied unless a clear error was made.

Chair called for comments from the public, summarized:

Martin Campos, 4202 Clover Lane, Brighton, CO, 80601

Mr. Campos spoke in opposition to the development, citing concerns for the safety related to the detention pond, increased crime, decreased property value, and the developer's reputation. Mr. Campos cited project impacts to special needs children.

Robert Rentz, 4211 Threshing Drive, Brighton, CO, 80601

Mr. Rentz submitted comment to be read aloud by the Commission Secretary. Mr. Rentz's comment was in opposition to the development, citing concerns for traffic, overcrowding, the ability to provide enough services for everyone, parking on 42nd, and general health and welfare of the community.

Sylvia Lyons, 210 Zuniga Street, Brighton, CO, 80601

Ms. Lyons spoke in opposition to the development, citing concerns for safety, ability to provide emergency services (including access), overcrowded schools, waste disposal, school ratings, change in neighborhood, Chavez Street, cost of roads, and the developer's reputation and tenant allowances.

Ms. Lyons cited project impacts to special needs children.

Phyllis Hall, 4222 Clover Lane, Brighton, CO, 80601

Ms. Hall spoke in opposition to the development, citing concerns for increased safety (related to past experiences), crime, parking, and resell value. Ms. Hall stated that she was told the site would be townhomes.

Kristen Cook, 3977 Sandoval Street, Brighton, CO, 80601

Ms. Cook spoke in opposition to the development, citing concerns for loud noise on road (backs Long's Peak Street), overcrowding, increased crime, Chavez Street, and the developer's reputation (former resident). Ms. Cook expressed a desire for small farm town feel.

Lyle Fair, 4651 Harvest Lane, Brighton, CO, 80601

Mr. Fair spoke in opposition to the development, citing concerns for project context (location), overcrowding, economic impacts, and welfare of the community. Mr. Fair stated that he was promised a school and requested that the Commission do the right thing (best interest of the community).

Kelly Schulte, 4236 Clover Lane, Brighton, CO, 80601

Ms. Schulte spoke in opposition to the development, citing concerns for the safety of the detention pond, traffic (outdated study and effects of new developments- including those in Lochbuie), increased burden to emergency services, project context (location), and the developer's reputation. Ms. Schulte stated that she was told the site would be townhomes. Ms. Schulte cited project impacts to special needs children.

Cindi Shutt, 224 Blue Bonnet Drive, Brighton, CO, 80601

Ms. Shutt spoke in opposition to the development, citing concerns for increased crime, ability to provide emergency services and infrastructure, unit count, noise, Louchbuie's Master Plan, water prices, traffic, storm drainage, light pollution, and developer's reputation.

Donna Garcia, 441 Farmhouse Way, Brighton, CO, 80601

Ms. Garcia spoke in opposition to the development, citing concerns for traffic, safety, and ability to provide emergency services. Ms. Garcia stated that she was told the site would be a school.

Naomi Hilgart, 372 Zuniga Street, Brighton, CO, 80601

Ms. Hilgart spoke in opposition to the development, citing concerns for decreased property value, traffic, and the developer's reputation (citing specific incidences in the past). Ms. Hilgart cited that she moved to Brighton for the small town rural feel.

Brenda McGee, 35 Pioneer Place, Brighton, CO, 80601

Ms. McGee spoke in opposition to the development, citing concerns for the appeal process, delay of 45th Avenue, timing of 40th Avenue, traffic (including warrants and traffic signal contributions-taxpayer funding), RTD bus stop locations, accesses, the cost and ability to provide infrastructure, and that the site was not planned for this density.

Amanda Black, 362 Zuniga Street, Brighton, CO, 80601

Ms. Black spoke in opposition to the development, citing concerns for noise, overcrowding, the ability to provide enough services for everyone (pharmacies in particular), views in the homes, safety, crime, rodents/pests, loss of small town feel, and the developer's reputation. Ms. Black cited that she moved to Brighton for the quiet, rural feel and that the project impacts special needs children.

Kynzie Black, 362 Zuniga Street, Brighton, CO, 80601

Ms. Black spoke in opposition to the development, citing concerns for safety (walking, cars).

Gavin Lee, 362 Zuniga Street, Brighton, CO, 80601

Mr. Lee spoke in opposition to the development, citing concerns for traffic and rodents/pests.

Chairman Maslanik called for a 5-minute recess.

Jan Ryan, 352 N. 42nd Avenue, Brighton, CO, 80601

Ms. Ryan spoke in opposition to the development, citing concerns for the density of the site, land entitlement process, other nearby developments, decreased property value, the developer's

reputation, the ability to provide enough services for everyone (grocery stores in particular), and the general health and welfare of the community. Ms. Ryan stated that residents are not being represented in the decisions made.

Marisa Nickerson, 4645 Longs Peak Street, Brighton, CO, 80601

Ms. Nickerson spoke in opposition to the development, citing concerns for overcrowding, growth rates, nearby new unit counts, the ability to provide enough services for everyone (grocery stores in particular), and food shortages. Ms. Nickerson spoke to a desire to limit new building permits until additional grocery stores are in place.

Lora Dawson, 354 Tumbleweed Drive, Brighton, CO, 80601

Ms. Dawson spoke in opposition to the development, citing concerns for decreased quality of life and property value, infrastructure, crime, traffic, and the developer's reputation. Ms. Dawson cited that she wouldn't have moved to Brighton if she knew that apartment development was coming in.

Larry and Betty Bobo, 4180 Combine Place, Brighton, CO, 80601

Mr. and Ms. Bobo spoke in opposition to the development, citing concerns for the approval process, last application on the property, zoning, appeal process, and the developer's reputation. Mr. and Mrs. Bobo stated that no notice was given to neighboring residents nor posted on the site. They requested clarification as to why a special warranty deed was issued for a site that was zoned agricultural according to Adams County records.

Mr. Flanagan stated that the Commission would not be responding to comments, but the special warranty deed is a type of warranty deed with specific legal attachments and that the property is zoned as a Planned Unit Development.

Michelle Jaramillo, 447 Silo Court, Brighton, CO, 80601

Ms. Jaramillo spoke in opposition to the development, citing concerns for increased populations and water usage and infrastructure since funding was not received for the water treatment plant.

Nancy Sanderson, 687 Hayloft Way, Brighton, CO, 80601

Ms. Sanderson spoke in opposition to the development, citing concerns for loss of rural community, residency of decision makers and staff, lack of information/notification, noise, traffic, crime, and the Mayor not being present. Ms. Sanderson requested that the Commission listen to the people who pay taxes.

Roger Gill, 393 Tumbleweed Drive, Brighton, CO, 80601

Mr. Gill spoke in opposition to the development, citing establishment of the City as a farming community and concerns for traffic (cited recent incidences), crime, resident consideration, and overdevelopment.

Matt Mooney, 472 Sunshine Way, Brighton, CO, 80601

Mr. Mooney spoke in opposition to the development, citing concerns for maintenance in the area, traffic, waste disposal, ability to provide infrastructure, the developer's reputation, and pests/rodents.

Chair called for deliberation among the Commissioners, summarized:

Commissioner Balderas stated that he has been living in Brighton for 45 years and has seen it change considerably, and sited personal accountability for the traffic and pollution to which everyone contributes. Taxes are paid by all residents, one way or another. Commissioner Balderas cited that the requirements are set on purpose with input from the community (including the volunteer Commission).

Chairman Maslanik stated that the Commission must determine if a clear error was made in the approval of this plan as this is the limited legal matter before them. Citizens participated in the process of creating the Comprehensive Plan and Land Use and Development Code. There is a predetermined approval process which must be followed. Growth and progress are required to attract businesses. Chairman Maslanik spoke to the entitlement process for development related to the site and desire for realtors to show zoning maps.

Motion by Commissioner Leck to deny the appeal

Second by Commissioner Balderas

Voting Aye: None

Voting Nay: All Present

Motion passes: 5-0

Chairman Maslanik thanked the Appellant and the residents for their time and noted his appreciation for Commissioner Balderas' time serving on the Commission as he has reached his term limits. Commissioner Leck also thanked Commissioner Balderas for his service. Commissioner Balderas stated that he has enjoyed serving the community.

V. ADJOURNMENT

Motion to adjourn at 9:07 p.m.

Motion by Commissioner Balderas

Second by Commissioner Wahl

Voting Aye: All Present

Motion passes: 5-0

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF BRIGHTON
STATE OF COLORADO**

In re: Appeal of an Administrative Decision to Approve a Site Plan (Vistas at Donelson Park)

FINDINGS OF FACT AND DECISION

The hearing in this matter was held on January 20, at 6:00 p.m., at Brighton City Hall, 500 S. 4th Avenue, Brighton, CO 80601.

This hearing was prompted by Mr. George Ryan (the "Appellant") submitting an Appeal of Administrative Decision (the "Appeal") on November 29, 2021. In the Appeal, Appellant asserts that the Community Development Director's (the "Director") approval of the Vistas at Donelson Park site plan (the "Site Plan") was in error because it was: (i) against the express standards of the Land Use and Development Code (the "LUDC"); and (ii) an unreasonable interpretation or application of the standards.

At the hearing, the following documents, were recognized as being part of the record in this matter:

- a. The Staff Report dated December 21, 2021, prepared by the Department of Community Development, identified as **Record No. 1** and incorporated by reference herein.
- b. The Appeal of Administrative Decision dated November 29, 2021, identified as **Record No. 2** and incorporated by reference herein.
- c. The Bromley Park Annexation Agreement, 1st Amendment dated April 13, 1987, identified as **Record No. 3** and incorporated by reference herein.
- d. The Amended and Restated Annexation Agreement, dated October 3, 2000, identified as **Record No. 4** and incorporated by reference herein.

- e. The Bromley Park PUD Overall Development Plan dated January 22, 1985, identified as **Record No. 5** and incorporated by reference herein.
- f. The Bromley Park PUD Overall Development Plan First Amendment dated October 28, 1986, identified as **Record No. 6** and incorporated by reference herein.
- g. The Bromley Park PUD Overall Development Plan Second Amendment dated May 19, 1997, identified as **Record No. 7** and incorporated by reference herein.
- h. The Bromley Park PUD Overall Development Plan Third Amendment (Minor) dated March 4, 2002, identified as **Record No. 8** and incorporated by reference herein.
- i. The Brighton East Farms Preliminary Plat dated February 5, 2001, identified as **Record No. 9** and incorporated by reference herein.
- j. The Brighton East Farms Filing 1 Final Plat dated November 6, 2001, identified as **Record No. 10** and incorporated by reference herein.
- k. The Brighton East Farms Filing First Amendment dated August 13, 2002, identified as **Record No. 11** and incorporated by reference herein.
- l. The Brighton East Farms Filing Third Amendment dated September 10, 2019, identified as **Record No. 12** and incorporated by reference herein.
- m. The Plan Review Application dated May 12, 2021, identified as **Record No. 13** and incorporated by reference herein.
- n. The Site Plan Checklist dated 2021, identified as **Record No. 14** and incorporated by reference herein.
- o. The ALTA Land Title Survey dated December 17, 2020, identified as **Record No. 15** and incorporated by reference herein.

- p. The Vistas at Donelson Park – Neighborhood Meeting Minutes dated April 26, 2021, identified as **Record No. 16** and incorporated by reference herein.
- q. The Vistas at Donelson Park – Final Drainage Report dated August 10, 2021, identified as **Record No. 17** and incorporated by reference herein.
- r. The Vistas at Donelson Park – Geotechnical Report dated June 11, 2021, identified as **Record No. 18** and incorporated by reference herein.
- s. The Vistas at Donelson Park – Utility Report dated August 3, 2021, identified as **Record No. 19** and incorporated by reference herein.
- t. The Traffic Impact Study dated June 2019, identified as **Record No. 20** and incorporated by reference herein.
- u. The Traffic Impact Study dated June 2021, identified as **Record No. 21** and incorporated by reference herein.
- v. Planning Comment Letter 01 dated May 28, 2021, identified as **Record No. 22(a)(1)** and incorporated by reference herein.
- w. The Address Map – Redlines R1 with a revision date of January 2, 2019, identified as **Record No. 22(a)(2)** and incorporated by reference herein.
- x. The Site Plan and Civil Plan – Planning Set – Redlines R1 with an issued date of April 23, 2021, identified as **Record No. 22(a)(3)** and incorporated by reference herein.
- y. Planning Comment Letter 02 dated July 7, 2021, identified as **Record No. 22(b)(1)** and incorporated by reference herein.
- z. United Power Comments dated July 7, 2021, identified as **Record No. 22(b)(2)** and incorporated by reference herein..

aa. Vistas at Donelson Park Planning Set – Redlines R2 dated June 22, 2021, identified as **Record No. 22(b)(3)** and incorporated by reference herein.

bb. Planning Comment Letter 03 dated August 31, 2021, identified as **Record No. 22(c)(1)** and incorporated by reference herein.

cc. United Power Comments dated August 23, 2021, identified as **Record No. 22(c)(2)** and incorporated by reference herein.

dd. Vistas at Donelson Park FDP GS3 with the latest revision date of August 6, 2021, identified as **Record No. 22(c)(3)** and incorporated by reference herein.

ee. Planning Comment Letter 04 dated October 14, 2021, identified as **Record No. 22(d)(1)** and incorporated by reference herein.

ff. United Power Comments dated October 6, 2021, identified as **Record No. 22(d)(2)** and incorporated by reference herein.

gg. DRC Approval Letter dated November 1, 2021, identified as **Record No. 23** and incorporated by reference herein.

hh. Vistas at Donelson Park – MOU Signed dated October 14, 2021, identified as **Record No. 24** and incorporated by reference herein.

ii. Vistas at Donelson Park FDP Plan Set DRC Approved dated November 1, 2021, identified as **Record No. 25** and incorporated by reference herein.

FACTUAL BACKGROUND

On May 12, 2021, City staff accepted for review the Site Plan for 305 N. 42nd Avenue, Brighton, CO 80601 (the "Property"). Record No. 1 . The Site Plan for the Property (the "Project") consists of a 288-unit multi-family development that includes twelve three-story apartment

buildings, a clubhouse, and twelve accessory garage buildings. *Id.* The Project application included all required documents for review. Record No. 23.

The Director used all required materials for her review and found the Project met or exceeded the applicable requirements and criteria. Record No. 1. The Director does not have discretion to refuse a zoning entitlement if the project meets the applicable requirements. *Id.* Accordingly, the Director approved the Site Plan. Record No. 25.

Despite meeting all the applicable requirements, Appellant alleged that the Director's approval of the Site Plan was: (i) against the express standards of the LUDC; and (ii) was an unreasonable interpretation or application of the standards. Record No. 2. A hearing before the Planning Commission was set and took place as scheduled and in accordance with the procedural requirements in the LUDC.

LEGAL BACKGROUND

Under Section 6 of Article XX of the Colorado Constitution, the City, as a home-rule municipality, has the authority to create ordinances governing local and municipal matters. Pursuant to this authority, the City passed regulations regarding zoning and subdivision including requirements for the submittal and approval of a site plan prior to development. Article 2 of the LUDC states the process for approval of a site plan. Relevantly, the LUDC states that site plans are approved by the Director and specifies clear criteria for the approval. *See* LUDC Table 2-1; LUDC § 2.06(B).

An appeal of an administrative decision, including approval of a site plan, is governed by Article 2.09 of the LUDC. The appeal is a process to determine if there was an error in the interpretation, administration, or enforcement of the Code following a final decision made by an

administrative official of the City. LUDC § 2.09(A). Appeals of an administrative site plan are reviewed by the Planning Commission. LUDC § 2.06(D).

BURDEN OF PROOF

The Appeal is reviewed by the Planning Commission giving the administrative official's decision a presumption of correctness and placing the burden of persuasion of error on the appellant. LUDC § 2.09(D). The appellant must prove the Director made a clear error in approving the site plan to be successful on appeal.

DECISION

At the hearing, the Planning Commission unanimously voted to deny the Appeal. The Planning Commission found that the Appellant did not establish that the Director made any error in approving the Site Plan. Indeed, the Appellant only tangentially referred to the applicable criteria for approval and appeal of the Site Plan and did not connect any of the complaints made back to the burden of proof necessary to affirm the appeal.

Conversely, the Planning Commission relied on the applicable criteria in finding that the Appellant did not demonstrate the Director made a clear error. Further, the Planning Commission found that the Director followed the applicable criteria in approving the Site Plan and that such approval was correctly based on the Project meeting or exceeding all the applicable requirements.

CONCLUSION

WHEREFORE, because the Director correctly found that all applicable requirements and criteria were met for the Site Plan and the Appellant did not meet the burden of proof necessary to affirm the Appeal, the Planning Commission was correct in denying the Appeal of the Site Plan.

DATED this 24th day of February 2022.

By:

Chris Maslanik
Chair of the Planning Commission
City of Brighton, Colorado